

**ARTICLE IX. PENSION SYSTEM FOR DISABILITY AND RETIREMENT OF
MEMBERS OF POLICE AND FIRE DEPARTMENTS***

***Editor's note**--Question G of a special election held Nov. 2, 1999, and approved by voters of Miami Beach, amended art. IX in its entirety to read as herein set out. See the Related Special Acts Comparative Table.

Sec. 61. Creation of fund; merger of base and supplemental plans.

- (a) There is created a special fund to be known as the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach. The Fund shall be used exclusively for the purpose provided for in this article, and shall be collected, administered and disbursed according to the provisions of this article.
- (b) Effective as of October 1, 1999, the Police Officers' and Fire Fighters' Supplemental Pension (the "Supplemental Plan") shall be merged into and become a part of this System. In connection with the merger, all assets of the fund created and maintained in connection with the Supplemental Plan shall be transferred to the Fund.
- (c) Except as otherwise expressly provided in this article, the rights and benefits of any member who retires or whose employment is terminated on or after October 1, 1999, shall be determined solely in accordance with the provisions of this System as in effect and operative at the time of such retirement or termination. However, his benefit and Creditable Service under this System as of October 1, 1999, shall not be less than his benefit and Creditable Service under the System as in effect on September 30, 1999, if he was only a member in the System as of such date, under the Supplemental Plan as in effect on September 30, 1999, if he was only a member in that plan and not a member in the System as of such date or under both the System and the Supplemental Plan as in effect on September 30, 1999, if he was a member in both the System and the Supplemental Plan as of such date.
- (d) Except as otherwise expressly provided in this article, the rights and benefits of any member of the System or the Supplemental Plan who retired or whose employment terminated

prior to October 1, 1999, and who is not reemployed by the City after that date in a position that would entitle him to be a member in the System, shall be determined solely in accordance with the provisions of the System as in effect on the date of his retirement or termination if he was only a member of the System as of that date, solely in accordance with the provisions of the Supplemental Plan as in effect on the date of his retirement or termination if he was only a member of the Supplemental Plan as of that date or in accordance with the terms of the System and the Supplemental Plan as in effect on the date of his retirement or termination if he was a member of both the System and the Supplemental Plan as of that date.

(Laws of Fla., 1945, ch. 23414, § 1; election of 11-2-99)

Sec. 62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the Board of Trustees appointed and elected to administer and supervise the System as provided in section 76.

City means the City of Miami Beach, Florida.

Creditable Service means the Employee's service determined as provided in section 65 used to determine his eligibility for certain benefits under the System and the amount of his benefit under this System.

Dependent Parent means a parent of a member for whom a member is entitled, or would have been entitled, to claim a dependency exemption for federal income tax reporting purposes.

Domestic Partner means a person with whom a member has entered into a Domestic Partnership as defined in sec. 62-126, and registered and documented according to the requirements of sec. 62-127.

Effective Date means September 20, 1945.

Employee means any regular member of the police department or fire department who has attained regular civil service status in such department under the official classifications of positions in the classified service of the City, having a rank in such department other than civilian rank and other than the classification of school guard. Unless they have never held

classified positions with the City, the chiefs of the police and fire departments shall be considered Employees for the purposes of this System.

Fund means the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach created by section 61.

Handicapped Child means a child of a member who has reached the age of 18 and who is primarily dependent upon the member for the child's livelihood or support due to a mental or physical condition or handicap of the child which requires, or otherwise would have required, the member to provide primary support for the child.

May 1993 Member means a member first employed by the City on or after May 19, 1993.

Salary, for the purpose of determining member contributions under this System, means the member's base pay, longevity pay, overtime, shift differential and extra compensation allowance such as uniform allowance, before reduction for the picked-up member contributions and before reduction for any amounts contributed in accordance with sections 125 or 457 of the Internal Revenue Code. However, for periods prior to October 1, 2000 and solely with respect to May 1993 Members, the term "Salary" shall refer only to base pay and longevity pay, excluding any payment of overtime, shift differential or extra compensation allowance such as uniform allowance, but determined before reduction for the picked-up member contributions and before reduction for any amounts contributed in accordance with sections 125 or 457 of the Internal Revenue Code. For purposes of determining the amount of a member's benefit under the System, Salary shall mean the amount determined under this section as modified by the provisions of section 66 under which the benefit is being provided. Notwithstanding anything herein to the contrary, a member's Salary taken into account for any purpose under this System, including for purposes of determining the amount of a member's benefit and his contribution to this System, shall not exceed the limitation set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for changes in the cost of living by the Secretary of the Treasury of the United States. However, for employees who were members before the first plan year beginning after December 31, 1995, the limitation on Salary shall not be less than the amount which was allowed to be taken into account under this article as in effect on July 1, 1993.

Surviving Spouse shall mean the lawfully wedded spouse of a member of the System living with the member at the time of the member's death.

System means this Pension System for Disability and Retirement of Members of Police and Fire Departments, as from time to time amended.

(Laws of Fla., 1945, ch. 23414, § 3; Laws of Fla., 1953, ch. 29286, § 2; election of 11-7-89; election of 11-2-99; election of 11-6-01)

Sec. 63. Source of moneys for fund; computation of liability; use and investment of fund.

- (a) At the end of each fiscal year of the City, the City shall pay into the Fund the amount the Board determines is required under this System, in addition to the personal contributions of members.
- (b) Each member of this System shall contribute 10% of his Salary to the Fund. The City shall, solely for purposes of complying with section 414(h) of the Internal Revenue Code, pick up contributions required to be made by the members under this System. The contributions so picked up shall be treated as employer contributions for purposes of determining their tax treatment under the Internal Revenue Code.
- (c) All computations of liability in connection with the System shall be based on tables and rates approved by the Board. The Board shall designate an actuary for the System who shall recommend such tables and rates for adoption by the Board. The actuary designated by the Board, on the basis of such tables and rates, shall recommend to the Board the amounts required to be paid into the System by the City under subsection (a) of this section.
- (d) There shall be a complete actuarial evaluation prepared by the actuary at least every three years, and the City shall make such adjustments in its contributions as shall be shown to be required by such actuarial evaluation. The money required to meet all the obligations of this System over and above the personal contributions from the members, is a liability and obligation of the City. The expenses of the System shall not be separately budgeted so long as that method is permitted by law. The City commission shall levy annually, in the manner provided by law, upon all taxable property within the City, such millage on the assessed valuation thereof as is necessary to produce the amounts required to be contributed by the City to this System.
- (e) Nothing in this System shall be construed to prevent the City administration from appropriating moneys from the

general fund or from any special funds of the City for the purpose of creating or adding to the Fund, and the City shall have the right to appropriate moneys from the general fund or any special fund of the City in addition to a millage. Furthermore, the City shall have the right and power to designate other sources of revenue for the Fund, including the designating of certain fines and forfeitures for violation of the City ordinances to be paid to the Fund instead of the general revenue of the City.

- (f) No moneys raised by taxation or otherwise provided for in the Fund shall be used other than for the purpose of this System.
- (g) Money shall be withdrawn from the Fund only upon warrants executed by at least five members of the Board. The Board shall have exclusive charge of the investment of any surplus in the Fund not needed for the Fund's current obligations. The Board shall, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the Fund, exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the Board is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire or retain for their own account and, within the limitations of the foregoing standard, the Board may retain property acquired, without limitation as to time and without regard to its suitability for original purchase. The intent of this provision is to remove any and all restrictions which are otherwise imposed by F.S. chs. 175 or 185 and which may be removed.
- (h) Moneys needed for meeting the System's current obligations may be deposited in a depository recognized by law for the deposit of funds of the State of Florida and upon posting of similar security to that required for public deposits. The City shall have the custody of and responsibility for any funds, stocks, bonds, notes or other evidences of indebtedness and such custody shall be for the purpose of safekeeping only, without any discretion in the City regarding the propriety of any withdrawal or transfer of any

such funds, stocks, notes, or other evidences of indebtedness or funds.

(Election of 11-2-99)

Sec. 64. Membership; transfer of accumulated total credit; severance of employment and reemployment.

- (a) Any individual who is an Employee on October 1, 1999, who was a member of the System on that date shall remain a member of this System. All individuals who become Employees on or after October 1, 1999, shall automatically be members of this System and shall submit to a physical examination as prescribed by the Board; however, the result of such examination shall not affect eligibility for membership in this System, but shall be used for the proper administration of the System by the Board.
- (b) Whenever any member of this System voluntarily severs his employment with the City prior to becoming eligible for a pension, but retains civil service rights with the City, and does not have returned to him the monies provided for in section 70, he shall again become a member upon resuming his employment as an Employee. However, he shall be entitled to no benefits under this System between the date of such severance and the date of such reemployment, except those which may have accrued to him prior to such severance, and further provided upon such reemployment he shall submit to the medical examination required by this section.

(Laws of Fla., 1945, ch. 23414, § 4; election of 6-2-59; election of 11-2-99)

Sec. 65. Computation of creditable service; service record.

- (a) A member's Creditable Service shall include all periods of time of actual work for which wages or salaries were received by the member in the service of the fire or police department and, notwithstanding anything to the contrary in this article, all time served in the unclassified service of the City as provided in section 70, whether it be provisional, probationary or regular work or employment, and whether or not such periods are interrupted, together with all service in the uniformed services of the United States required to be included under section 82; provided, however, that only periods of service in the uniformed services of the United States for which the member makes the member contributions as provided for in section 82 shall be Creditable Service for purposes of computing the amount of the member's benefit from the System. Notwithstanding any

provision to the contrary, in no event shall the same period of service be counted more than once as Creditable Service under this System.

- (b) Employees who become members of this System in order to receive credit for service rendered prior to their becoming a member shall make contributions to the Fund in the amount such member would have contributed had he been a member during the period of service for which credit is being purchased. In order to receive such credit, employees shall make payment within six months after becoming a member or within such other period as may be provided in a bargaining agreement covering the member. Notwithstanding the foregoing, any employee who transfers to this System whereby the accumulated total credit in any other pension system of the City is transferred to this System, then and in that event, all of the creditable service time in such other system shall be considered Creditable Service time under this System, and such employee need make no additional contribution for time credited.
- (c) The Board shall establish the service record of all employees who may be entitled to participate in the benefits of this System, and shall keep a record thereof.
- (d) Members with 20 or more years of creditable service who are eligible to receive normal or early retirement benefits under the System may purchase additional creditable service under the System for up to two (2) years of full-time public safety service as a law enforcement officer or firefighter prior to City employment, provided the member is not entitled to receive a benefit for such service under another pension plan, and further provided that the member may not purchase a combined total of more than four (4) years of creditable service for prior public safety service and prior military service, and further subject to limitations contained in sec. 66 (j). The cost for each year of creditable service for prior public safety service purchased shall be the same rate as provided in sec. 82(b) for the purchase of prior military service, with the cost prorated for fractional years of service. For purposes of this purchase, an employee may use the value of accrued sick and/or annual leave, valued at the employee's hourly rate at the time of purchase.

(Election of 11-2-99; election of 11-6-01)

Sec. 66. Service and disability benefits generally.

- (a) The Board shall, upon application retire members meeting any one of the following requirements:

- (1) The attainment of age 50.
 - (2) Permanent and total disability incurred in line of duty in the police or fire department, or in the unclassified service as provided in section 70, irrespective of the number of years of Creditable Service.
 - (3) Permanent and total disability incurred other than in the line of duty, after five years of Creditable Service.
 - (4) The sum of the member's age and Creditable Service equals at least 70 and the member retires on or after October 1, 1998.
 - (5) Only for periods prior to October 1, 2000 and only in the case of a May 1993 Member, the attainment of age 55 with at least 10 years of Creditable Service.
- (b) A member, other than a May 1993 Member who retires prior to October 1, 2000, shall be entitled to receive upon retirement under subsection (a), a monthly pension payable for life equal to:
- (1) Three percent of the member's average monthly Salary for each year of the member's first 15 years of Creditable Service, being computed as to a part of a year on a pro rata basis to the nearest month; plus
 - (2) Four percent of the member's average monthly Salary for each year of the member's Creditable Service in excess of 15 years, being computed as to a part of a year on a pro rata basis to the nearest month.
- (c) A May 1993 Member who retires prior to October 1, 2000, shall be entitled to receive upon retirement under subsection (a) a monthly pension payable for life equal to three percent of the member's average monthly Salary for each year of the member's Creditable Service, being computed as to part of a year on a pro rata basis to the nearest month.
- (d) For purposes of determining a member's benefit, the average monthly Salary of the member shall be based on the average of the two highest-paid years of the member prior to the date of retirement or termination, or the average of the last two paid years of the member prior to the date of retirement or termination, whichever produces the greater

benefit for members employed by the City before May 19, 1993, and shall be based on the average of the three highest paid years of the member prior to the date of retirement or termination for May 1993 Members. For purposes of such calculation, Salary shall be the Salary upon which the member's contribution to the System was computed. However, with respect to a member employed before May 19, 1993, and retiring on or after October 1, 1994, the inclusion of overtime in the member's Salary for the two highest-paid years or last two years, as the case may be, shall be limited in each year to an amount which is equal to 70% of the difference between the member's annualized pay rate at retirement and the highest annualized pay rate for the next higher salary rank; but in no event shall such member's accrued benefit on his date of retirement be less than the benefit he had accrued as of September 30, 1994, determined under the terms of the System in effect on that date.

- (e) Notwithstanding anything in this section to the contrary, the benefits provided in this section shall not exceed 90% of the member's average monthly Salary as defined in subsection (d) of this section; provided, however, that the benefits for May 1993 Members shall not exceed 80% of such Salary.
- (f) The minimum pension for a member retiring for permanent and total disability under subsection (a)(2) of this section shall be 85% of the member's Salary at the time of disability retirement; provided, however, that the minimum pension for a May 1993 Member shall be 75% of such Salary. The minimum pension for a May 1993 Member retiring for permanent and total disability under subsection (a)(3) of this section shall be 50% of the member's Salary at the time of the disability retirement.
- (g) If any member eligible for benefits under this article shall terminate his employment after having completed at least 10 years of Creditable Service but prior to attaining age 50 years (or after having completed one year of Creditable Service but before attaining age 55 and completing 10 years of Creditable Service for a May 1993 Member), and does not withdraw his accumulated contributions in the System, such member shall be entitled to receive upon attaining age 50 (age 55 or his termination of employment, if later, for a May 1993 Member) a monthly pension payable for life in accordance with the provisions of subsection (b) (or subsection (c) for a May 1993 Member) of this section; provided, however, the benefit so determined shall be reduced for a May 1993 Member by 10% multiplied by the difference between the member's years of Creditable Service

at his date of termination and 10. If the member dies prior to attaining age 50 (age 55 or his termination of employment, if later, for a May 1993 Member), no benefit shall be payable under subsection (b) (or subsection (c) for a May 1993 Member); instead, the member's estate shall be entitled to all moneys contributed by the member to this System together with accumulated interest on that sum at the rate of three percent per annum computed until the date of payment to the member's estate.

- (h) (1) Notwithstanding anything in this section to the contrary, the minimum monthly pension payable for the life of any member who was employed prior to July 1, 1976 and who retires after attaining age 50 and completing at least 15 years of Creditable Service or after meeting the requirements of subsection (a)(3) or (a)(4) of this section 66 shall be equal to:
 - (A) Three percent of the member's average monthly Salary for each of the first 20 years of his Creditable Service, being computed as to a part of a year on a pro rata basis to the nearest month; plus
 - (B) Two and three-quarters percent of the member's average monthly Salary for each of his years of Creditable Service in excess of 20, being computed as to a part of a year on a pro rata basis to the nearest month.
 - (2) For purposes of this subsection (h) the member's average monthly Salary shall be the Salary upon which the member's contribution to the System was computed for the two highest paid years of the member prior to his date of retirement.
 - (3) Notwithstanding anything to the contrary, benefits provided under this subsection (h) shall not be more than 85% of the average monthly Salary used to compute the benefit under this subsection.
 - (4) The minimum pension for a member retiring under this subsection (h) for permanent and total disability shall be 75% of the member's Salary at the time of his disability retirement.
- (i) Nothing in this section shall be construed to prevent the City manager or the Board from initiating action for the compulsory retirement of a member eligible for retirement, prior to such age, where such member is considered to be

unfit for the proper performance of his duties because of physical or mental incapacity. Upon certification by the medical board designated by the Board pursuant to section 76(j) that such member is mentally or physically incapable of proper performance of duties, the member shall be automatically retired. Any member who is compulsorily retired by an act of the Board shall have the right to appeal such retirement to a court of proper jurisdiction. The member shall defray his own expense in his appeal of such compulsory retirement.

- (j) Members with 20 or more years of creditable service who are eligible to receive normal or early retirement benefits under the System may also purchase up to an additional six percent (6%) benefit multiplier in accordance with this subsection. A member may purchase up to an additional six percent (6%) benefit multiplier if the additional creditable service for prior public safety purchased pursuant to sec. 65(d) or prior military service pursuant to sec. 82(b) does not exceed a combined total of two (2) years; and a member may purchase an additional three percent (3%) benefit multiplier if the additional creditable service for prior public safety service purchased pursuant to sec. 65(d) or prior military service pursuant to sec. 82(b) does not exceed a combined total of three (3) years. The cost for each additional three percent (3%) benefit multiplier purchased shall be the same as the cost for each year of prior military service purchased in accordance with sec. 82 (b). For the purpose of this purchase, an employee may use the value of accrued sick and/or annual leave, valued at the employee's hourly rate at the time of purchase.

(Laws of Fla., 1945, ch. 23414, § 7; Laws of Fla., 1949, ch. 26034, § 2; election of 5-24-66; election of 11-2-99; election of 11-6-01)

Sec. 67. Cost-of-living adjustment.

- (a) In the case of a pensioner who was employed by the City prior to May 19, 1993, or a beneficiary of such a member who has been receiving a pension for at least one year under the System as of October 1, 1989, or any subsequent October 1, the amount of pension payable to him under the System as of such October 1, other than a pension payable under subsection 66(h) of the System, shall be increased by 2 1/2% of the amount payable to him under the System.
- (b) In the case of a pensioner who was a May 1993 Member, or a beneficiary of such a member, who has been receiving a pension for at least one year under the System as of October

1, 1994, or any subsequent October 1, the amount of pension payable to him under the System as of such October 1, determined without regard to any cost of living increase previously granted under this section, shall be increased by 1 1/2%.

- (c) In the case of a pensioner who has been receiving a benefit under subsection 66(h) of the System for at least three years as of July 1, 1982, or any subsequent July 1, the amount payable to him under the System as of such July 1 shall be increased as of the next following October 1 by 2%.
- (d) In the case of a pensioner or beneficiary who retires after October 1, 1988, under the System or after October 1 of any subsequent year and who therefore must wait more than 12 months for his first increase, the amount of pension payable to him as of the October 1 next following the first anniversary of the commencement of his pension shall be increased by a specified percentage, as defined in this subsection, of the amount payable to him under the System multiplied by a fraction, the numerator of which is the number of months for which his pension under the System has been paid and the denominator of which is 12. The specified percentage shall be 2 1/2% for members and their beneficiaries and 1 1/2% for May 1993 Members and their beneficiaries.
- (e) For purposes of determining the one-year requirement of subsections (a) and (b) of this section and the three-year requirement of subsection (c) of this section, the pension commencement date for a beneficiary receiving a pension as the result of the death of a retired member who was receiving a pension at the time of his death shall be the date on which the retired member began to receive his pension.
- (f) The provisions of this section shall not apply in the case of a member of the System who elected in writing prior to the earlier of his date of retirement or January 1, 1990, to waive his membership in the Police Officers' and Fire Fighters' Supplemental Pension in accordance with the provisions of section 78-246 or 78-247 of Chapter 78 of Part II of the Miami Beach City Code as in effect at such date.

(Election of 11-2-99)

Sec. 68. Service-connected death benefits.

If any member shall lose his life while in the discharge of his duties, or shall die within five years from injuries received

while in the discharge of his duties, and shall leave a Surviving Spouse or Domestic Partner or a child or children or one or more Dependent Parent(s), the Board shall authorize and direct payment of a pension to the member's Surviving Spouse or Domestic Partner or child or children or Dependent Parent(s) as follows:

- (a) To the Surviving Spouse or Domestic Partner, the greater of:
 - (1) The pension to which the deceased member would have been entitled under section 66; and
 - (2) Eighty-five percent of the member's Salary at the date of his death.
 - (b) If there is no Surviving Spouse or Domestic Partner, or if the Surviving Spouse remarries or dies, or the Domestic Partner marries, enters into another Domestic Partnership, or dies, the benefit set forth in subsection (a) of this section shall be paid in equal portions to each child of the deceased member. However, benefits shall continue to be paid to the member's Surviving Spouse on the Surviving Spouse's remarriage, instead of to the member's children, if the member is killed in the line of duty. Payments under this subsection to any child shall cease when:
 - (1) The child attains age 18 (or age 22 in the case of a child who is a full-time student in high school or college, in the case of a Handicapped Child ceases to be a Handicapped Child); or
 - (2) The child marries or dies.
- A legally adopted child shall have the same rights as a natural born child but no pension shall be allowed to any stepchild of a deceased member or child of any Domestic Partner.
- (c) If there are no benefits payable to a child or children, the benefit set forth in subsection (a) of this section shall be paid to the Dependent Parent of the deceased member. If both parents are Dependent Parents, such benefit shall be shared equally.
 - (d) The trusteeship and disbursement of the pension to any child or Dependent Parent is to be determined by the Board.
 - (e) The pension payments to a Surviving Spouse, Domestic Partner, children and Dependent Parents shall not be

decreased or reduced due to benefits received by them under any workmen's compensation law.

(Laws of Fla., 1945, ch. 23414, § 8; Laws of Fla., 1953, ch. 29286, § 5; election of 11-2-99; election of 11-6-01)

Sec. 69. Nonservice-connected death benefits.

(a) If any member, other than a member entitled to a benefit under section 68, shall die after completing five years of Creditable Service or after meeting the requirements for retirement under section 66, whether or not pension payments have commenced, the Board shall authorize and direct payment to the member's Surviving Spouse or Domestic Partner and/or child or children and/or a Dependent Parent in equal monthly installments as follows:

- (1) To the Surviving Spouse or Domestic Partner, the pension to which the deceased member was entitled or was receiving at the time of death or would have been entitled at the time of death under section 66 of this System, for the first 12 months, and thereafter the greater of:
 - (A) (i) Seventy-five percent of the pension payable under section 66 determined without regard to subsection 66(h), if the member retired on or after October 1, 1988 and is not eligible for a benefit under subsection 66(h) of the System, (ii) 50% of the pension payable under this System if the member was a May 1993 Member; or (iii) the greater of 50% of the pension payable under subsection 66(h) or 75% of the pension payable under section 66 determined without regard to subsection 66(h) if the member is eligible for a benefit under subsection 66(h) of the System or
 - (B) Twenty-five percent of the member's average monthly Salary for his two highest paid years. The monthly installments shall continue until the Surviving Spouse's remarriage or the Domestic Partner's marriage or entry into another Domestic Partnership. However, if the Surviving Spouse was married to the deceased member less than 10 years, or the Domestic Partnership was registered for less than 10 years, the benefit provided in this subsection shall be payable until remarriage or death, but in no case longer than for the period of the normal life expectancy of the deceased member at the time of his death, determined in

accordance with the mortality table adopted by the Board.

- (2) To the child or children or Dependent Parent(s), the provisions of section 68 governing the conditions and restrictions applicable to the administration of pensions for children and Dependent Parents shall apply, as the case may be.
- (b) If any member, other than a member entitled to a benefit under section 68, who retired prior to October 1, 1988 but after completing five years of Creditable Service, shall later die from causes not attributable to his duties, the Board shall authorize and direct payment to his Surviving Spouse or Domestic Partner and/or child or children in equal monthly installments as follows:
- (1) To a Surviving Spouse or Domestic Partner, the amount of the pension to which the deceased member was entitled or was receiving at the time of death or would have been entitled at the time of death, computed in accordance with the terms of the System as in effect on his retirement, for the first 12 months, and thereafter the greater of:
 - (A) Fifty percent of such pension or
 - (B) Twenty-five percent of the average monthly Salary for the two highest paid years.

The monthly installments shall continue until the Surviving Spouse's remarriage or death, or the Domestic Partner marries, enters into another Domestic Partnership, or dies. However, if the Surviving Spouse was married to the deceased member less than 10 years, or the Domestic Partnership was registered for less than 10 years, the benefit provided in this subsection shall be payable until remarriage or death, but in no case longer than for the period of the normal life expectancy of the deceased member at the time of his death determined in accordance with the mortality table adopted by the Board.

- (2) To the member's children under 18 years of age, \$100.00 per month; provided, however, the benefit shall continue until the child is age 22 if the child is a full-time student in high school or college. The combined maximum benefit payable to the member's children shall be \$200.00 per month and the combined maximum benefit payable to the Surviving Spouse or Domestic Partner and the member's children shall be \$320.00 per month. However, this maximum limitation

shall not in any manner limit the Surviving Spouse's or Domestic Partner's benefits provided in subparagraph (1) above. For purposes of this subparagraph, a legally adopted child shall have the same rights as a naturally born child but no pension shall be allowed to any stepchild of a deceased member.

(Laws of Fla., 1945, ch. 23414, § 9 3/4; election of 6-2-59; election of 5-24-66; election of 11-5-68; election of 11-18-69; election of 11-2-71; election of 9-28-76; election of 11-3-87; election of 11-2-99; election of 11-6-01)

Sec. 70. Return of contribution.

- (a) Except as provided in subsections (b) and (c) of this section, whenever any member in the service of either the fire or police department shall sever his connection with such department either voluntarily or by lawful discharge, or by death not attributed to his active duties prior to the completion of five years of membership in the department, or by death in active service after the completion of five years of membership in the department leaving no Surviving Spouse, Domestic Partner, children or Dependent Parents entitled to pension benefits under this System, such member or his estate shall be entitled to the return of all the moneys he has contributed into this System, together with accumulated interest on the sum, at the rate of three percent per annum, computed until date of payment to the member or his estate, unless in the event of discharge or voluntary severance such member has at that time qualified under the terms of this System for a pension from the System.
- (b) Any member of this System who separates from active service with the fire or police departments to accept an appointment to any office in the unclassified service of the City shall continue to have all the rights, privileges and responsibilities of this System.
- (c) Any member of this System who separates from active service with the fire or police departments to accept an appointment to any office in the classified service of the City shall immediately become a member of the City of Miami Beach Employees Retirement System and shall receive creditable service under that system for service which is Creditable Service under this System. Upon a member of this System becoming a member of the City of Miami Beach Employees Retirement System, the Board shall transfer from the funds of this System to the City of Miami Beach Employees Retirement System an amount equal to three times the accumulated amount of the member's contributions under this

System that were paid by the member to this System, together with interest thereon to the date of transfer. For purposes of this section, moneys a member has contributed shall include picked-up member contributions together with interest thereon.

(Election of 11-2-99; election of 11-6-01)

Sec. 71. Cancellation of participation in other systems.

Membership in this System shall automatically cancel the membership and participation of any Employee in any other pension, annuity or retirement system for employees of the City to which the City contributes.

(Laws of Fla., 1945, ch. 23414, § 10; Laws of Fla., 1947, ch. 24709, § 5; Laws of Fla., 1953, ch. 29286, § 7; election of 11-2-99)

Sec. 72. Contract between member and City.

- (a) Within 30 days after an Employee becomes a member of this System, or October 1, 2000, for a May 1993 Member, the City shall prepare a contract for execution between the City and the Employee. The contract shall be in the following form:

"This agreement, made and entered into this _____ day of _____, 20_____, between the City of Miami Beach, a municipal corporation under the laws of the State of Florida, hereinafter referred to as City, and (individual employee), hereinafter referred to as Employee.

"WITNESSETH: THAT WHEREAS, the City established the Pension System for Disability and Retirement of Members of Police and Fire Departments, hereinafter referred to as the System, and

"WHEREAS, it is beneficial to the City to have the Employee protected by the terms of the System and benefits and the Employee is desirous of participating in the System, it is thereupon

"UNDERSTOOD AND AGREED by and between the parties that the Employee does hereby allot, out of his salary or wages, paid to him by the City, determined before reduction for picked-up contributions in accordance with section 63(b) of the System or any amounts contributed on a pretax basis in accordance with sections 125 and 457 of the Internal Revenue Code, an amount equal to the percentage of said salary or wages specified in section 63(b) of the System from his date

of membership, and does hereby authorize and direct the disbursing officers or officer of said City to retain out of said wages or salary said amount, in compliance with the terms of the System, and to continue to make said allotment and authorize said deduction throughout the entire time of his employment or reemployment or until such time as he shall be entitled to receive the pension allowance or benefit provided by the Fund. For the purpose of determining the Employee's contributions under the System, salary or wages shall be computed in accordance with the definition of "Salary" in section 62 of the System.

"IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties that the City will accept said allotment or deduction from the salary or wages of the Employee and when, under the terms of the System, the Employee or the Employee's beneficiary shall be entitled to receive the benefits from the Fund herein created, will pay said sum or sums from said Fund and all other benefits so authorized to the Employee or his beneficiaries, in accordance with the terms of the System, without diminution or deduction.

"IT IS FURTHER UNDERSTOOD AND AGREED that this contract shall remain in force without change, modification or amendment, until all the purposes now intended to be fulfilled shall have been fully performed, except that payment or other benefits to the Employee or his beneficiaries may be increased but not diminished.

"IT IS FURTHER UNDERSTOOD AND AGREED that the percentage of the allotment of, or deduction from, the salary or wages of the Employee shall not be increased during the term of this contract but may only be decreased or diminished by the City, nor shall the Employee lose any rights under the terms of this contract by reason of the refusal of the City at any time during the term hereof to make allotment or deduction from said wages or salary.

"IT IS FURTHER UNDERSTOOD AND AGREED that it is the intention of the parties hereto to create vested rights in the respective parties not to be hereinafter impaired for any cause whatsoever.

"IT IS FURTHER UNDERSTOOD AND AGREED that the terms of the System are declared to be a part of this contract and this contract is to be construed with reference thereto.

"IN WITNESS WHEREOF, the City has caused these presents to be executed, signed and sealed, with the seal of the City, by its duly authorized officers, and the Employee has

hereunto set his hand and seal the day and year first above written. (Here follow signatures and seals.)

The contract shall be executed in duplicate, one copy to be retained by the City, the other copy to be delivered to the employee joining in the contract. The contract shall thereafter be and remain a contract binding upon the City and the employee, and shall be enforceable in any court in the State of Florida having jurisdiction of actions upon contracts in like amount, and by such relief, ordinary or extraordinary, at law, or in equity as may be suitable or appropriate in similar causes.

(b) Nothing in this section shall abridge or enlarge the rights of members acquired under contracts executed pursuant to this section.

(Laws of Fla., 1945, ch. 23414, § 12; Laws of Fla., 1947, ch. 24709, § 6; Laws of Fla., 1953, ch. 29286, § 9; election of 11-2-71; election of 9-28-76; election of 11-3-87; election of 11-2-99)

Sec. 73. Restoration of health of participant retired for permanent incapacity.

If a member who has been retired on a pension on account of permanent and total disability regains his health and is found by the Board to be in such physical and mental condition as to meet the requirements of the City's human resources department for service acceptable to the City, the Board shall order his pension discontinued, and he shall be ordered to resume active service in the department from which he was retired at the same or similar work as that at which he was employed prior to his disability retirement, or at other work within the limits of his physical or mental capabilities at a rate of compensation not less than 70% of the pay at the time of his return to active service for the classification occupied by him prior to his disability retirement. Upon request of the City manager, the Board shall review the condition of any member receiving a pension for disability and shall submit to the City manager a report thereon, and if there shall be substantial evidence that the retired member is capable of performing service acceptable to the City in the department from which such member was retired, he shall be ordered to resume active duties and his pension shall be discontinued.

(Election of 11-2-99)

Sec. 74. Disposition of pension where pensioner convicted of felony.

Upon a member's conviction of a felony and actual incarceration in a penitentiary, any pension being paid to the member under this System shall be paid to his wife or children as herein prescribed for a deceased member under this article, until his official release from incarceration, then the pension will be paid to the pensioned member again.

(Laws of Fla., 1945, ch. 23414, § 15; election of 11-2-99)

Sec. 75. Dismissal from service.

Members entitled to a pension shall not forfeit the pension upon dismissal from the department, but shall be retired as prescribed in this article.

(Laws of Fla., 1945, ch. 23414, § 16; election of 11-2-99)

Sec. 76. Board of trustees.

- (a) The general administration and responsibility for the proper operation of the System is vested in a board consisting of three members of the City administration other than police officers, firefighters or the City manager, to be appointed by the mayor of the City, and three Employees of the fire department and three Employees of the police department, who shall be elected in accordance with subsection (b) of this section.
- (b) The election of the trustees from the Employees of the fire department and the police department shall be held by per capita vote of all active and retired Employees of each of the respective departments who come within the purview of this article. An election to elect the members of the fire department and police department to serve as trustees shall be held every two years.
- (c) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.
- (d) The trustees shall serve without compensation, but they may be reimbursed from the expense fund for all necessary expenses which they may actually expend through services on the Board.
- (e) Each trustee shall after his appointment or election take an oath of office before the City clerk, that so far as it devolves upon him he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the

provisions of the law applicable to the System. Such oath shall be subscribed to by the member making it and certified by the City clerk and filed in his office.

- (f) Each trustee shall be entitled to only one vote on the Board. Five votes shall be necessary for a decision by the trustees at any meeting of the Board.
- (g) Any trustee who neglects the duties of his office shall be removed by the Board.
- (h) Subject to the limitations of this article, the Board may from time to time establish rules and regulations for the administration of the Fund and for transaction of its business, including provisions for compulsory attendance of its members, which shall have the force of law.
- (i) The Board shall elect from its number a chairman and a secretary. It shall engage such actuarial and other services as shall be required to transact the business of the System. The compensation of all persons engaged by the Board and all expenses of the Board necessary for the operation of the System shall be paid at such rates and in such amounts as the Board shall agree, but in no case shall the expenditures for such services or operations exceed three percent of the maximum of the Fund for each fiscal year. All funds shall be disbursed by the Board.
- (j) The Board shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this article. The medical board shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability or retirement and shall report its conclusions and recommendations in writing to the Board upon all matters referred to it. The payment for such services shall be determined by the Board.

(Election of 11-2-99)

Sec. 77. Duration of retirement pension; contributions upon retirement.

Pensions granted to retired members shall be paid to them for life and shall not be revoked nor in any way diminished except as provided in this System. A member's payments to this fund shall cease upon the earlier of his retirement and acceptance of a pension or his election to participate in the DROP adopted in accordance with section 79.

(Laws of Fla., 1945, ch. 23414, § 20; election of 11-2-99)

Sec. 78. Nonassignability of pension.

No benefits provided by the System shall be assignable or subject to garnishment for debt or to other legal process, and no pension provided by this System shall be subject to any deductions or assessments by the City. No benefits provided by the system shall be altered or modified in any respect due to the fact that any member may be the recipient of any benefits from any other pension or pension plan; provided, however, workers' compensation benefits paid by the City to a retired member shall be credited against any pension payments payable on account of permanent and total disability incurred in the line of duty in the police or fire department, or in the unclassified service as provided in section 66(a)(2).

(Election of 11-2-99)

Sec. 79. Deferred Retirement Option Plan (DROP).

A Deferred Retirement Option Plan ("DROP") shall be adopted and administered by the Board. The DROP shall contain such terms and provisions as may be necessary to reflect the terms of the bargaining agreements between the City and the International Association of Firefighters (IAFF) ratified by the City Commission on September 23, 1998 and between the City and the Fraternal Order of Police (FOP) ratified by the City Commission on July 15, 1998, and any amendments to those agreements. The DROP shall also contain such other terms and provisions as the Board deems necessary and appropriate for the proper administration of the DROP. The terms and provisions of the DROP shall be incorporated into this article by reference and shall be deemed to be a part of the System.

(Election of 11-2-99)

Sec. 80. Assets to be held in trust; rights of members on termination of System.

All assets of the Fund shall be held by the Board in trust for use in providing the benefits of the System and paying its expenses not paid directly by the City; provided that no part of the corpus or income of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of members or their beneficiaries under the System, prior to the satisfaction of all liabilities for benefits with respect to them or for the administrative expenses of the System. No person shall have any interest in or right to any part of the earnings of the Fund, or

any rights in, or to, any part of the assets thereof, except as and to the extent expressly provided by the System. In case of termination of the System, or in the event of the discontinuance of contributions thereunder having the effect of such termination, the rights of all members of the System to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

(Election of 9-28-76; election of 11-2-99)

Sec. 81. Examination into facts upon which any pension has been granted.

The Board shall have the power to examine into the facts upon which any pensions are granted under this System, and to ascertain if any pension has been granted or obtained erroneously, fraudulently or illegally for any reason. The Board shall also be empowered to purge the pension rolls of any pensions granted under this System, if the same are found to be erroneous, fraudulent or illegal for any reason; and to reclassify any pensioner who, under this System, is erroneously, improperly or illegally classified.

(Laws of Fla., 1945, ch. 23414, § 22; Laws of Fla., 1947, ch. 24714, § 3; election of 11-2-99)

Sec. 82. Military service.

- (a) Any member of the System or any probationary employee in the fire or police department who is absent from the service of the City because of service in the uniformed services of the United States (as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994) who returns to the service of the City having applied to return while his reemployment rights were protected by law, shall be entitled to all retirement rights and privileges under this system if such member, or such probationary employee after he becomes a member, contributes the amount such member or probationary employee would have contributed had he been a member during the period of service in the uniformed services for which credit is being purchased, and creditable toward service retirement as provided in this section. The amount of any such contributions shall be determined based on the member's Salary in effect immediately prior to such period of absence and the terms of the System in effect at that time. The member shall make any such payments to the System during a repayment period equal to the lesser of (i) three times the member's period of absence for service in the uniformed services or (ii) five years. The repayment period shall begin on the later of (i) the date the member

is reemployed by the City and (ii) the date the City notifies the member of his rights under this section.

- (b) A member who has at least 20 years of Creditable Service and who is entitled to receive benefits under the System may contribute an additional amount to the System in order to receive service credit for his years of active military service in the U.S. Army, Navy, Air Force, Marines or Coast Guard occurring prior to his date of employment with the City. A member may purchase up to four years of such service. The price for each such year shall be 10% of the aggregate of his Salary during the 12 calendar months immediately preceding the date of such purchase; and such price shall be prorated accordingly if a member's election includes a fractional year of service. Any additional benefits attributable to service purchased under this subsection (b) shall be determined in accordance with the three percent benefit rate as described in section 66(b)(1) or 66(h)(1)(A), as the case may be.

(Laws of Fla., 1945, ch. 23414, § 24; Laws of Fla., 1947, ch. 24709, § 9; Laws of Fla., 1951, ch. 27734, § 4; Laws of Fla., 1953, ch. 29286, § 13; election of 11-2-99)

Sec. 83. Limitations on benefits.

- (a) In addition to the other limitations set forth in this System and notwithstanding any other provision of the System to the contrary, the maximum annual pension payable under the System shall not increase to an amount in excess of the amount permitted under section 415 of the Internal Revenue Code, with such limitation specifically subject to subsections (F), (G) and (I) of section 415(b)(2) of the Internal Revenue Code and sections 415(b)(11), 415(k)(3) and 415(n) of said Code.
- (b) For purposes of applying the limitations of section 415 of the Internal Revenue Code, the term "compensation" shall be determined by reference to the provisions of subsections (1) and (2) of Title 26 of the Code of Federal Regulations, section 1.415-2(d), as modified by subparagraph (10) of that regulation and by section 1434(a) of the Small Business Job Protection Act of 1996.

(Election of 11-7-89; election of 11-2-99)

Sec. 84. Distribution limitation.

Notwithstanding any other provision of this System, all distributions from this System shall conform to section 401(a)(9)

of the Internal Revenue Code in general and to section 401(a)(9)(C) of the Internal Revenue Code in particular.

(Election of 11-2-99)

Sec. 85. Distribution to retirement plan.

(a) *Election by distributee.* This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.* The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Direct rollover means a payment by the System to the eligible retirement plan specified by the distributee.

Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse or domestic partner is a distributee with regard to the interest of the spouse or domestic partner.

Eligible retirement plan means an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse or domestic partner, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Eligible rollover distribution means any distribution of all or any portion of the balance to the credit of the distributee; except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period

of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

(Election of 11-2-99; election of 11-6-01)

Sec. 86. Special rules for members employed by the City on or after May 19, 1993.

- (a) For purposes of determining the provisions of the System which apply to a member who was employed by the City prior to May 19, 1993, and is rehired on or after May 19, 1993, if such a member did not receive a distribution of his accumulated contributions upon his termination of employment, he shall be treated as a member employed by the City prior to May 19, 1993; in all other cases, the member shall be deemed a new employee as of his date of reemployment and the provisions of the plan applicable to new members on and after May 19, 1993, shall govern.
- (b) Notwithstanding anything in this article to the contrary, on and after September 30, 2000, all May 1993 Members shall be treated as if they were employed by the City prior to May 19, 1993, for purposes of determining their benefits under the System. May 1993 Members may purchase creditable service for their probationary period during the period beginning on June 30, 2000, and ending on September 30, 2000, if they are still employed by the City at that time. Any such purchase shall be on such terms and conditions as the Board shall, in its sole discretion, determine.

(Election of 11-2-99)